

**DARIEN AFFORDABLE HOUSING PLAN
CHAPTER 5 PLAN PRINCIPLES AND GOALS
FIRST DRAFT
JUNE 9, 2022**

Chapter 5 Plan Principles and Goals

Existing Principles and Goals

This Affordable Housing Plan is to supplement the 2016 Plan of Conservation and Development (POCD), not replace it. The Principles and Goals as stated in the 2016 POCD are still applicable and are the adopted and stated goals and policies of the Darien Planning and Zoning Commission. From Chapter 10, Manage Residential Development of the POCD, they can be summarized as follows:

- Maintain the residential character of the community. Although Darien is predominantly developed as single-family residences and neighborhoods, there is a range of housing types to meet the broad array of the housing needs of a varied and changing population. Higher densities are near the train stations located in Noroton Heights and in downtown Darien. The density is reduced as the distance from these centers and the Boston Post Road (Route 1) increases.
- The Planning and Zoning Commission will continue to review the Residential Zoning provisions, including but not limited to, district locations and boundaries, building height restrictions, setback, bulk, land coverage, as well as other regulations that govern the size and locations of structures in the residential zones.
- Darien will continue to diversify the housing portfolio to address the needs of an aging population and other various groups that already do, or want to be able to, reside in the community. Not all of that varied housing types will be ‘affordable’ as defined by the Statutes, much of it will be less expensive than the typical single family detached dwelling on a separate lot that constitutes approximately 90% of the housing in Darien.

Amendments of the State Statutes

The goals and principles need to recognize and incorporate the changes to State Statutes that enable Darien to have local zoning regulations because Darien’s governmental authority is derived from the State. The ability of the Town to regulate the use of land and structures, to control the subdivision of land, to control the location and installation of public infrastructure, and all the other aspects of land use regulations, all comes to the Town from the State of Connecticut. All of the Town’s regulations and practices must be in compliance with, and not contrary to, the authority granted to the Town by the State.

In 2021, Public Act No. 21-29 was adopted by the Connecticut State Legislature and was signed into law. It is more commonly referred to as PA 21-29. A copy is included as Appendix 5-1. It includes numerous changes and amendments with respect to the Zoning enabling statutes. Most significantly, with respect to affordable housing, it requires each municipality:

- To create and adopt an Affordable Housing Plan that will result in the creation of more affordable housing units in accordance with existing Section 8-30g of the Statutes; and
- To adopt regulations that permit ‘accessory apartments’ as defined by PA 21-29 to be allowed as a right on any property that has just a single family dwelling, or by January 1, 2023 to opt-out of that requirement; and

- To have zoning regulations that shall address significant disparities in housing needs and access to educational, occupational and other opportunities, as well as affirmatively further the purposes of the federal Fair Housing Act, 42 USC 3601 et seq;
- To modify the manner in which dwelling units are counted when comparing the total number of dwellings in a community to the number of affordable housing units in that municipality (accessory apartments will not count in the total number of dwelling units).

Affordable Housing pursuant to CGS Section 8-30g

CGS Section 8-30g of the Connecticut General Statutes is explained in great depth in the Town of Darien Affordable Housing Plan as approved by the Board of Selectmen on August 24, 2009. Rather than repeating that information in full, Section 8-30g is simplified and summarized here.

An affordable housing unit is a deed restricted dwelling unit that will only be sold or rented to a family whose income is 80% or less of the State Median Income (SMI) and the cost to own or rent the unit will be no more than 30% of the income of the qualified family. The deed restriction shall last for at least 40 years. When an application is submitted to the local land use agency with at least 30% of the total number of dwelling units set-aside as ‘affordable’ (at least 15% of the dwelling units set aside for families with an income of no more than 60% of the SMI and at least another 15% of the units set aside for families with no more than 80% of the SMI), it is a set-aside development and the local agencies must give the proposed development special treatment due to the need for affordable housing.

Rather than denying the set-aside development application, the local Planning & Zoning Commission is to waive restrictions or requirements that would preclude the affordable housing and to make reasonable modifications to the application to address their concern(s) because if it is denied, the applicant can appeal to Superior Court. Then the burden of proof falls upon the Planning & Zoning Commission to prove that the need to protect public health or safety outweighs the need for affordable housing and the public health or safety interest cannot be protected by reasonable changes to the application. The usual reasons for denial - restrictions such as setbacks, density, height, community character, permitted use, off street parking, etc., are not suitable grounds to withstand an appeal in the case of an affordable housing set-aside development. In that way, such set-aside developments are able to override the typical zoning restrictions. Another aspect of 8-30g is that if an application is denied, the applicant can modify and resubmit the proposal and it is to be treated as an amended plan rather than a new application. This provision was intended to provide another option to developers/builders, rather than only an appeal to Court.

Section 8-30g notes that if 10% of housing within the community is ‘affordable’, then the community is no longer subject to the provisions of 8-30g. Thus 10% affordable housing is seen by some as the goal to be achieved. Others see the 10% as the minimum that needs to be accomplished, but not the final goal.

Section 8-30g includes a provisions for a potential moratorium, a “Certificate of Affordable Housing Completion” for a community that increases that amount of affordable housing units by 2% or more of the total housing units in the community. There is a Housing Unit Equivalent (HUE) point system depending on the type of affordable units (rather than each unit counting as one point). A table of the HUE points is included as Appendix 5-2. The moratorium lasts for four years, during which applications for affordable housing development are not subject to the procedures for appeals to the Superior Court.

One of the problems with the target of achieving 10% or more of the housing units to be 'affordable' is that the total number of housing units in the community continues to grow. In many cases, owners create small developments that are under the size that would mandate some affordable housing. Even in the cases where a set-aside development has 30% of the units qualified as affordable, the project also has 70% of the units available at market rate. This increase in the total number of units means that more affordable housing units must be created in order to reach the target of 10%.

Despite this argument about "moving the goalposts", Darien has successfully applied for and obtained two moratoria. These were made possible for the most part by the redevelopment of the Heights of Darien (formerly Allen O'Neill Housing) and the The Royle at Darien (formerly The Old Town Hall Homes), as well as private developments such as Avalon Darien on Hollow Tree Ridge Road and numerous other developments that created deed-restricted affordable housing units as a result of the incentive and inclusionary housing amendments incorporated into the Darien Zoning Regulations.

The Planning and Zoning Commission agrees with the statement within the 2009 Town of Darien Affordable Housing Plan -

"The Board of Selectmen has, therefore, determined that it is in the Town of Darien's interest to obtain moratoria as allowed by 8-30g to enable the Town to plan and develop affordable housing in a manner that best suits the community."

Public Act No. 21-29 (PA 21-29)

With respect to 'affordable housing', Public Act No. 21-29 includes the following definitions:

- "Accessory apartment" means a separate dwelling unit that (A) is located on the same lot as a principal dwelling unit of greater square footage, (B) has cooking facilities, and (C) complies with or is otherwise exempt from any applicable building code, fire code and health and safety regulations.
- "Affordable accessory apartment" means an accessory apartment that is subject to binding recorded deeds which contain covenants or restrictions that require such accessory apartment be sold or rented at, or below, prices that will preserve the unit as housing for which, for a period of not less than ten years, persons and families pay thirty percent or less of income, where such income is less than or equal to eighty percent of the median income.
- "As of right" means able to be approved in accordance with the terms of a zoning regulation or regulations and without requiring that a public hearing be held, a variance, special permit or special exception be granted or some other discretionary zoning action be taken, other than a determination that a site plan is in conformance with applicable zoning regulations.

These are new definitions that must be incorporated into the Darien Zoning Regulations.

The requirement for accessory apartments

In accordance with new Section 6 found on page 13 of Appendix 5-1, PA 21-29 requires that Zoning Regulations **shall be amended to allow, as-of-right** on each lot that contains a single family dwelling, **at least one Accessory Apartment**.

- The accessory apartment shall not be required to be an affordable accessory apartment.

- The accessory apartment shall be on the same lot as the principle dwelling and may be attached, or detached from, or part of the principal dwelling.
- The Regulations can specify the allowed maximum size of the accessory apartment provided it is at not less than 30% of the floor area of the principle dwelling or 1000 square feet, which ever is less.
- The Regulations can have setbacks, lot size, building frontage, height, landscaping and architectural design standards that are no more restrictive than for a single-family dwelling, but can allow lot coverage greater than what is required for the principal dwelling.

The regulations allowing accessory apartments cannot require

- a passageway /connection between the accessory apartment and the principal dwelling, or
- an exterior door for the accessory apartment or
- more than one parking space or fees in lieu of parking, or
- a familial, marital or employment relationship between occupants of the dwellings, or
- a minimum age for occupants, or
- separate billing of utilities, or
- periodic renewals for permits for the accessory apartment.

The Building Code requirements are still applicable. Fire sprinklers cannot be required if they would not be required for a single-family dwelling on the same lot.

The municipality can prohibit or limit the use of the accessory apartment for short term rental or vacation stays.

If a drinking water well or private sewerage system is being used, the approval for an accessory apartment shall not be unreasonably withheld. (In Darien, the adequacy of the residential well and on-site septic system is within the jurisdiction of the Health Department.)

The as of right application for an accessory apartment needs to be acted upon within 65 days of receipt.

The approval of an accessory apartment cannot be conditioned upon the correction of a nonconforming use, structure or lot.

If, by January 1, 2023, the municipality does not adopt new regulations to allow and permit accessory apartments as of right,

OR

If by January 1, 2023, the municipality does not properly opt-out of the provisions of the Statute, then any noncompliant existing regulations shall become null and void and any application for accessory apartment shall be approved or denied only based on the Statute. A municipality may not use or impose additional standards beyond those set forth in the Statute.

Accessory apartments built after January 1, 2022 and per this Statute shall not be counted in the total number of dwelling units within the community with respect to calculating the percentage of affordable housing units.

No municipality may opt-out of the accessory apartment provisions of the Statutes on or after January 1, 2023. In order to opt-out, there is a two-step process.

First, the Planning and Zoning Commission must:

- Conduct a public hearing on such proposed opt-out; and
- Affirmatively decide to opt-out in accordance with the time permitted by Section 8-7 of the Statutes; and
- State upon its records the reasons for such decision; and
- Have a vote of at least two-thirds of the Commission to opt-out; and
- Properly publish a legal notice of decision in an appropriate newspaper.

Second, then the municipality's legislative body (in Darien's case, the Representative Town Meeting), by a two-thirds vote to opt-out, would need to complete the process by January 1, 2023. If the opt-out process is not completed by January 1, 2023, then it is no longer possible to opt-out. At that point, any proposed accessory apartments must be approved if they comply with the provisions of the Statutes.

It should be noted that the requirement for accessory apartments is not necessarily to create any 'affordable' (deed-restricted affordable) dwelling units. The accessory apartments allowed as-of-right cannot be required to be affordable. Accessory apartments would likely, however, create more housing options and choices for people who want to reside in Darien. If the supply of housing units is increased, even if it is not sufficient to satisfy all of the demand, it will provide some people with the opportunity to live in Darien that is not currently possible.

Failure to take action with respect to accessory apartments will result in the Statute being implemented and accessory apartments being allowed as of right, without any local regulation. It is therefore appropriate that the Darien Planning and Zoning Commission promptly take two courses of action with respect to accessory apartments.

1. Discuss whether the Commission wants to commence the process to opt-out of the Statute regarding accessory apartments. If that is the case, a detailed time schedule will be needed for the Commission to hold a public hearing and take action, and still leave time for action needed by the RTM.
2. Draft proposed amendments to the Darien Zoning Regulations that will allow accessory apartments as of right in accordance with PA 21-29 and conduct a public hearing regarding the proposed amendments.

By following both courses of action, the Commission will be prepared to adopt accessory apartment regulations prior to January 1, 2023, or to opt-out in accordance with the Statute. If the Commission begins the opt-out process, it should be prepared to adopt accessory apartment regulations in case the RTM does not choose to opt-out by at least a two-thirds vote by the January 1, 2023 deadline.

Other possible changes to the Zoning Regulations

PA 21-29 does change the criteria for having local zoning regulations by making it a requirement that the regulations shall address significant disparities in housing needs and access to educational, occupational and other opportunities, as well as affirmatively further the purposes of the federal Fair Housing Act, 42 USC 3601 *et seq.*

The Commission will need to review the regulations and coordinate with Town Counsel to make sure that all portions of the Zoning Regulations are in compliance with the applicable provisions of the federal Fair Housing Act. During that review, any disparities in housing needs and access to educational, occupational and other opportunities need to be considered and the incentive and inclusionary provisions of the zoning regulations may need to be strengthened and broadened.